

# CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 045

June 27, 1958

## CORPORATE LIQUIDATION: TIMELY ELECTION TO RECOGNIZE GAINS

### Syllabus:

The one month period in which to make the election provided in section 17402 of the Personal Income Tax Law commences running upon the final adoption of the plan of liquidation.

X Corporation adopted a plan of liquidation on November 1, in accordance with the provisions of section 17402 of the Personal Income Tax Law. The original plan was amended on November 13. Elections were filed by the stockholders of X Corporation under section 17402 subsequent to December 1, but prior to December 13. Advice is requested as to whether the elections filed by the stockholders of X Corporation were timely within the purview of section 17402 of the Personal Income Tax Law.

Section 17402 requires that the elections to come within the provisions of this section be filed within one month from the time of the adoption of the plan of liquidation. It is true that the original plan was adopted on November 1, and the elections were filed more than one month subsequent to that date, however, the final adoption of the plan as amended took place on November 13, and the elections were filed within one month from the November 13th date.

It would be unrealistic to start the one month period running from the time of the adoption of the original plan since many questions might arise leading to amendments and revisions of an original plan of liquidation. The statute clearly contemplated that the plan of liquidation as finally adopted would be the one which would be controlling since only at that time would the stockholders be in a position to finally exercise their election. Any other construction would place an undue burden on the stockholders. It is, therefore, recommended that the elections be accepted as having been timely filed.